In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

UNITED STATES OF AMERICA, PETITIONER

v.

EDWARD G. CHANDLER AND
ESTHER F. BORN, AS
EXECUTORS OF THE WILL OF
MARY E. BAUM, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the district court (Appendix A, *infra*, pp. 10-21) is reported at 312 F. Supp. 1263. The opinion of the court of appeals (Appendix B, *infra*, pp. 22-23) is reported at 460 F. 2d 1281.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 1972. (Appendix C, *infra*, p. 24.) By order

dated July 31, 1972, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and including September 14, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under applicable Federal Savings Bond Regulations, a purchaser and registered co-owner of a Series E United States Savings Bond can, by physical delivery of the bond to the other registered co-owner with the intent to make a gift, divest himself of the incidents of ownership so as to prevent inclusion of the bond in his gross estate under Section 2040 of the Internal Revenue Code of 1954.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of Section 22 of the Second Liberty Bond Act, Section 2040 of the Internal Revenue Code of 1954, Section 20.2040-1 of the Treasury Regulations on Estate Tax (1954 Code), and the Treasury Regulations on United States Savings Bonds, 31 C.F.R., Sections 315.5, 315.7, 315.15, 315.20, 315.60, 315.61 and 315.62, are set forth in Appendix D, *infra*, pp. 25-31.

STATEMENT

Decedent, Mary E. Baum, purchased several sets of Series E United States Savings Bonds with her own funds in 1954, and had them issued and registered in co-ownership form. One set of bonds was issued in the name of decedent "or" Patricia Ritter, decedent's granddaughter, and another set was issued in the name of decedent "or" Beatrice Born, also a granddaughter.

In 1961, decedent delivered these bonds to the respective co-owner-granddaughters with the intention of making complete, irrevocable, inter vivos gifts.[1] The bonds were neither reissued in the names of the granddaughters as sole owners, however, nor redeemed prior to decedent's death in 1962. (Appendix A, *infra,* p. 10.)

The two sets of savings bonds were disclosed but not included by respondents (as executors of the estate) in decedent's gross estate for federal estate tax purposes. (I-R. 16-17.) Upon audit of the estate's tax return, the government included the value of the bonds in the gross estate on the ground that, under applicable Treasury Regulations governing the issuance and transferability of Series E Savings Bonds, decedent failed to divest herself of her co-ownership interests in the bonds prior to her death because she did not have them reissued in her granddaughters' names. The district court held (Appendix A, *infra,* pp. 10-21) that decedent had effected completed gifts of her interests in the bonds when she transferred them to her granddaughters in 1961, and, consequently, that they were not includible in her gross estate under Section 2040 of the Internal Revenue Code. On appeal, the court of appeals affirmed for the reasons stated in the opinion of the district court. (Appendix B, *infra,* p. 23.)

REASONS FOR GRANTING THE WRIT

The decision of the court below in this case is contrary to the clear and unambiguous language of long-

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[1] It was stipulated by the parties that these gifts were not made in contemplation of death. (I-R. 16.) ("R." references are to the duplicated record on appeal in the court of appeals.)

standing Treasury Regulations governing the ownership and transferability of savings bonds (31 C.F.R. 315.5 *et seq.*), and, along with the Third Circuit's decision in *Silverman* v. *McGinnes,* 259 F. 2d 731, is in conflict with the decision of the Court of Appeals for the Sixth Circuit in *Estate of Curry* v. *United States,* 409 F. 2d 671. The question raised here is of continuing importance, both to the administration of the tax laws and to the management of the federal savings bond program.

1. Section 2040 of the Internal Revenue Code of 1954 (Appendix D, *infra,* p. 26) requires the inclusion in a decedent's gross estate of all property acquired with consideration furnished by the decedent and held by the decedent and any other person in joint tenancy at the former's death. Under the Treasury Regulations on United States Savings Bonds, § 315.5 (Appendix D, *infra,* p. 27),[2] the form in which a Series E Savings Bond is registered is "conclusive" as to actual ownership. The bonds are nontransferable, and, in the case of jointly owned bonds, an attempted voluntary transfer which would defeat or impair a co-owner's rights,

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[2] These Regulations were issued under authority granted to the Secretary of the Treasury by Section 22 of the Second Liberty Bond Act (31 U.S.C. 757c) (Appendix D, *infra*) to issue savings bonds "in such manner and subject to such terms and conditions consistent with subsections (b), (c), and (d) hereof, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe." The Regulations were first issued by the Secretary of the Treasury in Department Circular 571 on December 16, 1936. (1 Fed. Reg. 2165.) References herein are to the eighth revision of the Regulations, which was in effect in 1961, when the bonds were transferred by decedent to her granddaughters.

including the right of survivorship, will not be given effect. (31 C.F.R. 315.15 and 315.20, Appendix D, *infra,* pp. 28-29.) The Regulations provide the only means for altering the ownership of Series E Bonds—reissuance by the Treasury pursuant to the request of the original owners. (31 C.F.R. 315.60, Appendix D, *infra,* pp. 29-31.) Decedent did not have the bonds in question reissued in her granddaughters' names as sole owners; consequently, when she transferred possession with the intent to make a gift, she retained her co-ownership or joint tenancy interests in the bonds, thereby requiring their inclusion in her gross estate under Section 2040.

2. In *Silverman* v. *McGinnes, supra,* the Third Circuit held that despite the Regulations, a Series E Savings Bond could be the subject of a completed gift without complying with the reissuance requirements. The court reasoned that the nontransferability and reissuance provisions of the Regulations are solely for the protection of the Treasury Department and are designed to prevent government involvement in suits between bond claimants. With regard to the rights of private parties the court held that a trust in favor of any lawful donee or transferee would be impressed on the bond proceeds paid to a registered owner. This Court rejected the *Silverman* rationale in *Free* v. *Bland,* 369 U.S. 663. There the Court held that the Treasury Regulations creating a right of survivorship in co-ownership federal savings bonds pre-empt inconsistent state property laws. In so holding, the Court refused to countenance a result which would have protected the government by allowing payment of the bond

proceeds to the surviving co-owner, while requiring him to reimburse the deceased co-owner's estate for one half of the proceeds. As the Court noted, such a result "fails to give effect to a term or condition under which a federal bond is issued." (369 U.S. at 669.)

In the present case, the court of appeals affirmed *per curiam* for the reasons stated in the district court's opinion, and, consequently, did not adopt the broad view expressed in *Silverman* that all voluntary transfers of savings bonds are valid notwithstanding the Treasury Regulations. It held only that where, as here, the transfer is from one registered co-owner to the other co-owner of the bonds, the gift is complete even if the transferor has not complied with the reissuance requirements, since the donee, as a registered co-owner with possession of the bond, could demand and receive the bond proceeds from the Treasury at any time. (31 C.F.R. 316.60, Appendix D, *infra*, p. 29.) In *Estate of Curry* v. *United States, supra,* the Sixth Circuit reached the opposite result when confronted with a purported gift of a Savings Bond from one co-owner to the other. It held, for purposes of Section 2040, that (409 F. 2d at 674) "A valid gift inter vivos cannot be accomplished by manual delivery to a donee unless the bonds also are surrendered and reissued in the name of the donee in accordance with the Treasury Regulations." [3]

3. The instant case creates a distinction between transfers of Savings Bonds to strangers and transfers to co-owners which is not supported by the Regulations.

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[3] Accord: *Estate of Elliott* v. *Commissioner*, 57 T.C. 152 (pending on appeal to the Fifth Circuit); *Chambless* v. *United States*, 25 A.F.T.R. 2d 1512 (S.C.).

In addition, the decision misconstrues the rights bestowed upon co-owners of Savings Bonds which form the basis for inclusion in the gross estate under Section 2040 of the Internal Revenue Code and Section 20.2040-1 of the Treasury Regulations on Income Tax (1954 Code). (Appendix D, *infra*, p. 27.)

The basis for inclusion of jointly owned savings bonds in a decedent's estate is the bundle of rights (whether or not exercised) which he possesses in the bonds until the date of his death. In the present case, when decedent transferred the bonds to her granddaughters, she relinquished none of those rights. Thus, as a registered co-owner decedent retained until the date of her death the right to redeem the bonds (31 C.F.R. 315.60), to succeed to the proceeds if she survived the putative donees (31 C.F.R. 315.61, Appendix D, *infra*), and to join in or veto any attempt to have the bonds reissued (31 C.F.R. 315.60).[4] In holding that the purported gift was complete, the courts below ignored or misconstrued these provisions. Moreover, they failed to give effect to Section 315.20 of the Savings Bond Regulations, which voids any transfer of a bond that "would defeat or impair the rights of survivorship," for the *decedent's* right of survivorship would be defeated if the gift were deemed complete here.

4. The administrative importance of the decision below lies first in the potential for abuse which it creates

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[4] Thus, the district court was in error in stating that (Appendix A, *infra*, p. 20) the co-owner-donee could have the bond reissued by herself. Reissuance during the lives of the co-owners is possible only if requested by *both*. (31 C.F.R. 315.60.)

with respect to the income, estate, and gift taxation of Series E Savings Bonds. There are currently outstanding approximately five hundred million such bonds, worth over fifty billion dollars, of which seventy-five percent are registered in co-ownership form. The Ninth Circuit's decision here makes it possible for purchasing co-owners of Series E Bonds (who are also responsible for reporting interest income attributable to the bonds (see Rev. Rul. 54-143, 1954-1 Cum. Bull. 12)) to transfer their co-ownership interests without reporting these transactions to the Treasury Department by means of the reissuance procedures. The resulting administrative burden to the Internal Revenue Service in tracing the shifting ownership of these widely held instruments and the potential for evasion of the various taxes incident to ownership and transfer of these bonds are readily apparent.

In addition, as a result of the diverse decisions on the question whether a Savings Bond can be transferred without complying with the Regulations governing reissuance, the savings bond program, administered by the Bureau of Public Debt, is placed in a state of considerable confusion. The success of that program is dependent to a large extent on the uniformity and certainty of the obligation, regardless of where the investor may live. At this time, the transferability of Series E Bonds without compliance with the reissuance Regulations is unlimited in those States which comprise the Third Circuit, limited in the Ninth Circuit to transactions between co-owners, and completely restricted in the Sixth Circuit. Moreover, the state courts which have considered this question have failed to agree on

its resolution. See *Annotation: Gift—United States Savings Bonds,* 40 A.L.R. 2d 788; *Annotation: Succession Tax—United States Bonds,* 39 A.L.R. 2d 698; *Annotation: War Savings Bonds,* 168 A.L.R. 245. Review by this Court is needed to allow evenhanded treatment of similarly situated taxpayers, and to restore the nation-wide uniformity to the Savings Bond obligation which the Regulations were designed to accomplish.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1972.

APPENDIX A

[Filed, Mar. 11, 1970, C. C. Evensen, *Clerk*]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD G. CHANDLER, *etc.*, *Plaintiffs,* vs. UNITED STATES OF AMERICA, *Defendants.*	No. 50176 WTS *MEMORANDUM OF DECISION*

SWEIGERT, J.

This is a suit brought by the plaintiffs, executors, to recover federal estate taxes assessed against the estate of the decedent.

The case is before the court under submission for decision upon a stipulation of facts on file herein.

In 1954 Mary E. Baum, the decedent, had purchased Series E United States Savings Bonds, some of them issued in her name "or" Patricia Ritter, a granddaughter, and others issued in her name "or" Beatrice Baum, also a granddaughter.

It is stipulated that in 1961 Mary E. Baum delivered these bonds to the respective co-owner granddaughters with the intention of making complete, irrevocable inter vivos gifts to them. The bonds, however, were neither redeemed nor reissued prior to Mary E. Baum's death in 1962.

The question for decision is whether these bonds, still standing in the names of Mary E. Baum "or" the re-

spective granddaughters, are properly includable in the decedent's gross estate for estate tax purposes or, to put the question another way, whether it was legally possible, under the federal regulations governing such bonds, for the decedent, by manual delivery to the co-owners, to make an inter vivos gift sufficient to divest herself of all rights of ownership therein and to exclude the bonds from the decedent's taxable estate.

Internal Revenue statutes, 26 U.S.C. § 2040, provide in substance and effect that the value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by decedent and any other person.

Treasury Regulations relating to United States Savings Bonds, 31 C.F.R. 315, et seq., provide in substance and effect that the bonds are issued only in registered form as to owner and co-owner; that during the lives of both co-owners the government may pay to both upon their joint request or may pay to either co-owner upon his separate request without requiring the signature of the other co-owner and, upon payment to either, the other shall cease to have any interest in the bond. Provision is also made for reissue during the lives of both co-owners upon the request of both. If either co-owner dies without having surrendered the bond for payment or reissue, the surviving co-owner will be recognized as the sole and absolute owner of the bond.

The regulations further provide that the form of registration of the bonds must express the actual ownership of the bonds and that the bonds are "nontransferable and are payable only to the owners named thereon. . . ."

Regulation § 315.13 provides that "a claim against an owner or co-owner of a savings bond and conflicting claims as to ownership . . . as between co-owners . . . will be recognized when established by valid judicial proceedings and payment or reissue will be made upon presentation and surrender of the bond, except as follows: (a) no such proceedings will be recognized if they would give effect to an attempted voluntary transfer inter vivos of the bond or would defeat or impair the rights of survivorship conferred by the regulations in this part upon a surviving co-owner or beneficiary. . . ."

Plaintiffs, relying mainly on *Silverman* v. *McGinnes,* 259 F. 2d 731 (3rd Cir. 1958), which is precisely in point on the facts and the issue, contend that the regulations, properly construed, do not preclude an otherwise complete and valid inter vivos gift from one registered co-owner to the other and that such a gift, divesting the donor of her interest in the bonds, renders the bonds non-taxable in her estate.

In *Silverman,* the Court of Appeals, Third Circuit, (Goodrich, Staley and Hastie) reversing the District Court, recognized that "these regulations are of long standing and have the force of law. The question, however, is the scope of their application. . . . The point is that with regard to payment by the issuer, the government, the provisions of the contract, including the regulations, govern. But the regulations do not apply to the individual rights of persons who under the state law of property become equitably entitled to the proceeds. . . . We think that the preferable view is the conclusion that, as between the decedent's executor and the persons

to whom the decedent made a gift, complete except for going through the process of having the bonds reissued, the right of the donees is clear. . . ."

In *Estate of Chrysler* v. *C.I.R.*, 361 F. 2d 508 (2d Cir. 1966), also relied on by plaintiffs here, the court, reversing *Estate of Chrysler*, 44 T.C. 55, (1965) recognized the rule of *Silverman*. The Tax Court, distinguishing *Silverman*, had held that certain securities, including some United States Savings Bonds in name of decedent "or" certain co-owners, were includable in the estate of the decedent because, unlike *Silverman*, the evidence failed to show a delivery to the co-owner sufficient to indicate that decedent had divested himself of his potential right of survivorship. On review of the foregoing Tax Court decision, the Court of Appeals, Second Circuit, 361 F. 2d at p. 510, reversed and, citing *Silverman* with approval, held that the evidence was indeed sufficient to indicate that decedent had intended to divest himself of all interest in the securities and that, since the decedent retained no beneficial interest, within the meaning of Int. Rev. Code of 1954, § 2040 or § 2033, the securities should not be subjected to estate tax in the decedent's estate.

In the pending case we have the stipulation of the parties that the decedent *did* deliver the bonds to the co-owners and that she "intended complete and irrevocable gifts of the bonds to the respective co-owners."

In *Estate of Avery*, 40 T.C. 392 (1963), the Tax Court held that United States Savings Bonds, registered in the name of the decedent "or" his son as co-owner but kept in a box to which both had access, were includable

in decedent's estate as jointly held property. The reason for this decision, however, was that there was no evidence that decedent delivered the bonds or intended to release his interest as a potential survivor, citing *Estate of Boogher,* 22 T.C. 1167 (1954) as similar in that respect. The Tax Court recognized but distinguished *Silverman* on the sole ground that in *Silverman* the evidence *did* show (as the stipulation here also shows), that the donor intended to release his interest as a potential survivor.

The government, relying mainly on *Estate of Curry* v. *United States,* 409 F. 2d 671 (6th Cir. 1969) (which, although in point on the facts and the issue, declined to follow *Silverman*) contends that, as held in *Curry,* the ownership interest created in E Bonds is a matter of contract between the United States and purchasers of the bonds; that a valid inter vivos gift from one co-owner to the other cannot be accomplished by manual delivery of the bonds since the bonds were never surrendered and reissued in the name of the donee in accordance with the regulations; that the interest of the purported co-owner donor must therefore be included in his estate for estate tax purposes.

Although *Curry* "disagreed with the reasoning and conclusion in *Silverman,*" it did not, itself, give any reason for its disagreement except only to reaffirm what it considered to be the rule of *Guldager* v. *United States,* 204 F. 2d 487 (6th Cir. 1953), that rights or restates in these savings bonds are created by federal contract and controlled by federal law—a proposition with which we agree. *Curry* has been followed as recently as January 12, 1970, by the United States Dis-

trict Court, South Carolina in *Florence P. Chambless, et al., Executrices of Kolb* v. *United States,* Civil Action No. 68-1044.

Before attempting to resolve the conflict between the *Silverman* and *Curry* rulings, we note certain decisions of the Supreme Court in this field of United States Bonds.

In *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943) the Court laid down the principle that, where United States Bonds are concerned, we must look to federal law to determine not only the nature of the obligations, rights and duties of the United States as a party, but also the rights and duties of holders and transferees of such bonds among each other.

In *Free* v. *Bland,* 369 U.S. 663 (1962) this principle was applied to United States Savings Bonds, registered to Mr. "or" Mrs. Free, in a controversy between the surviving co-owner husband and a son claiming the wife's one-half community interest in the bonds through her estate and under her will. A Texas statute prohibited married persons from taking advantage of the survivorship provisions of the federal savings bond regulations when the purchase price of the bonds had been paid out of community property.

The Texas courts had held that under the federal regulations the savings bonds belonged to the surviving husband, but decreed that he should reimburse the son to the extent of the wife's one-half community interest and making the bonds security for such reimbursement. The Supreme Court reversed, holding that the federal regulations prevailed over state law; that the clear purpose of the regulations is to confer the right of survivor-

ship on the surviving co-owner as one of the inducements to purchase these federal bonds; that the state could not frustrate the parties' attempt to use the bond's survivorship provisions through the expedient of requiring the survivor to reimburse the estate of the deceased co-owner as a matter of law; that this would be state interference with the exercise of the power of the federal government to borrow money.

However, in *Bank of America* v. *Parnell,* 352 U.S. 29 (1956) the Supreme Court, considering conflicting claims to stolen H.O.L.C. bonds, reversed the Court of Appeals, 226 F. 2d 297 (3rd Cir. 1955) and followed a dissent therein written by Goodrich, J. (writer of *Silverman*) and held that, although federal law is paramount and controls in determining the nature of the bond contract and the rights and duties of the United States as a party, federal law does not necessarily govern the rights of private transferees among themselves; that securities issued by the government, although generating immediate interests in the government, also radiate interests in transactions between private parties and that, when litigation is purely between private parties and does not touch the rights and duties of the United States, or is only remotely or speculatively related to the purposes of the federal law, there is no justification for application of federal law to transactions essentially of local concern.[1]

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[1] In *Yiatchos* v. *Yiatchos,* 376 U.S. 306 (1964) the Supreme Court, applying an exception recognized in Free, *supra,* i.e., that federal regulations were never intended to be a shield for fraud and that relief could be awarded where the circumstances manifest fraud or breach of trust tantamount thereto, held that the regula-

As noted in both *Silverman* and *Curry*, there are many state court cases dealing generally with United States Bonds as subjects of valid gifts and as subjects of taxation. For example, *Connell* v. *Bauer*, 61 N.W. 2d 177 (Minn. 1953), 40 A.L.R. 2d 776; also *Littlejohn* v. *County Judge*, 58 N.W. 2d 278 (N.D. 1953), 39 A.L.R. 2d 690.

Most of these cases, however (e.g., *Connell*, itself; also *Brown* v. *Vinson*, 216 S.W. 2d 748 (Tenn. 1949); *Moore's Adm'r* v. *Marshall*, 196 S.W. 2d 369 (Ky. 1946); *Fidelity Union Trust Co.* v. *Tazyk*, 55 A. 2d 26 (N.J. 1947); *Collins* v. *Jordan*, 110 N.E. 2d 825 (Ohio, 1949), cases relied on in *Curry, supra;* also, *In re Klarfield's Estate*, N.Y.S. 2d 424 (1963)), involved situations in which a sole registered owner of a savings bond attempted to transfer it to a stranger to the bond. Since such a donee could not in any event, under the regulations, demand or obtain the proceeds from the Treasurer of the United States, such a transfer would be, not only incomplete as to delivery, but also fairly within the terms and purpose of the federal regulations.

It is not necessary to adopt the broad view expressed by other state courts (some of them cited in *Silverman*) that, even in such situations, i.e., transfer by a sole owner to a non co-owner donee, the transfer is valid notwithstanding the federal regulations. See, for example, *Marshall* v. *Felker*, 23 So. 2d 555 (Fla. 1945); *In re Borchard's Estate*, 38 N.Y.S. 2d 987 (1942);

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tions should not be construed as going so far as to permit a husband, without consent of his wife, to use community funds for the purchase of these savings bonds in the name of himself and his brother.

Hausfelder v. *Security First National Bank,* 174 P. 2d 84 (Cal. 1946); see also, *Moore* v. *Broderick,* 123 F. Supp. 108 (D. Kan. 1954); *District of Columbia* v. *Wilson,* 216 F. 2d 630 (D.C. Cir. 1954).

In our present case the so-called "transfer" is not from an owner to a stranger to the bond, but from one registered owner to the other registered owner, who, as such, having taken delivery of the bonds, could at any time have demanded and obtained the bond proceeds from the government under the regulations.

In the only cases in which this precise issue has been presented to state courts, a conflict exists: *Littlejohn* v. *County Judge, supra,* involving a state estate tax, holds in accord with *Silverman,* while *Weeks* v. *Johnson,* 82 A. 2d 416 (Me. 1951), involving a state inheritance tax, holds in accord with *Curry.*

In *Littlejohn,* which is precisely in point on the facts and on the issue, the North Dakota Supreme Court held that United States Savings Bonds registered in the names of two co-owners, although ordinarily subject to state estate and inheritance tax laws [2] were not subject to estate tax in the estate of one co-owner who had delivered the bonds to the other co-owner with donative intent, saying "We find nothing in the federal statutes or regulations which prohibits a gift *between co-owners named in a bond.*" (emphasis added).

On petition for a rehearing the court dealt even more specifically with the argument that such a transfer

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[2] That United States Savings Bonds and interests of registered co-owners therein, are otherwise subject to state inheritance and state estate taxes, is well established. See, 39 A.L.R. 2d 699, 700, 702 et se.

would be contrary to the federal regulations, saying: "As we read this and other federal regulations, when a bond of the *co-owner* type is issued, each co-owner becomes vested with a present interest in the bond and the bond itself and the regulations confer the right of survivorship upon the co-owner. There is nothing in these regulations to prohibit the transfer from *one co-owner to the other* of his interest in the bond. It is true, of course, that such a transfer cannot in any way impair the right of the United States to discharge its obligation under the bond and regulations by making payment to the survivors but the preservation of that right in the government does not result in the abrogation of the right of one co-owner, by gift inter vivos or otherwise, his interest in jointly owned property and the transfer of such an interest *by one co-owner to another* is not a violation of the regulatory provisions prohibiting *transfer* of United States Savings Bonds." (emphasis added).

Upon careful consideration of the regulations, including the legislative history and the cases, including related decisions of the Supreme Court, we reach the conclusion that the purported interest of Mary E. Baum in the savings bonds in question should not be subjected to federal estate tax; that on the stipulated facts said decedent has retained no interest in said bonds; that the federal regulations do not preclude a donative transaction whereby one registered co-owner divests herself of all interest to the other co-owner.

The regulations provide that these bonds are "non-transferable and are payable only to the owners named thereon." We do not consider that "non-transferable"

as used in the regulations, is applicable here. Read as a whole, and with a view to the purposes of the regulations, the term "transferable," means a transfer by one or more of the registered co-owners to strangers to the bonds, i.e., to persons who are *not* "owners named thereon." It does not apply to transactions solely between registered co-owners either of whom could at any time have cashed the bonds, or had them reissued without even the signature of the other.

Nor do we consider that the regulations preclude judicial determination establishing claims against a co-owner or conflicting claims as to ownership as between co-owners. Quite to the contrary, it will be noted that the regulations positively provide that judicial determination of this kind "will be recognized," the only *exception* being that such judicial proceedings will not be recognized "if they would give effect to an attempted voluntary transfer inter vivos of the bond *or* would defeat or impair the rights of survivorship conferred by the regulations in this part upon a surviving co-owner or beneficiary."

As already noted, the transaction here is not a "transfer inter vivos *of the bond*" and, therefore, the judicial determination here involved would not "give effect to" any such transfer as contemplated by the regulations.

Nor would the judicial determination here involved "defeat or impair the rights of survivorship . . . (of) a surviving co-owner." On the contrary, the rights of the surviving registered co-owners are here recognized and effectuated and in all probability they have already either cashed their bonds or had them reissued to them-

selves. There is, therefore, nothing here which could, within the meaning of the Supreme Court in *Free* v. *Bland, supra,* "frustrate" a co-owner's right to enjoy the bonds' survivorship provisions—as was clearly the situation in *Free* v. *Bland.*

Nor is there any element here which could, within the meaning of *Free* v. *Bland,* defeat the purpose of the federal regulations by subjecting the government to claims of persons other than, as provided in the regulations, claims by a registered owner.

Nor is there any element here which would possibly affect adversely the saleability of these government bonds.

In short, we find nothing in either the language or the history or the purpose of the regulations which reasonably calls for exacting an estate tax from the estate of Mary E. Baum under the stipulated circumstances of this record. There is no relationship between exaction of such a tax and the purposes of the regulations. Any such relationship as might be conceived would be, at the most, and as stated by the Supreme Court in *Bank of America* v. *Parnell, supra,* so "remotely or speculatively related to the purposes of the federal law . . . that . . . there is no justification for application of federal law to transactions essentially of local concern."

For the foregoing reasons the court concludes from the stipulated facts that judgment should be and is hereby rendered for plaintiff.

Dated: March 10, 1970.

W. T. SWEIGERT
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD G. CHANDLER and ESTHER F. BORN, as executors of the will of MARY E. BAUM, Deceased,
Plaintiffs-Appellees,

vs.

THE UNITED STATES OF AMERICA,
Defendant-Appellant.

No. 26,085

[May 17, 1972]

Appeal from the United States District Court for the Northern District of California

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Before: CARTER, WRIGHT and TRASK, Circuit Judges

PER CURIAM:

This appeal is from a district court judgment adverse to the United States in a federal estate tax refund case. The question for decision is whether Series E United States Savings Bonds purchased by the decedent in her own name and that of a co-owner, are taxable in her estate where she had delivered them to the co-owner prior to her death with the intention of making an

irrevocable inter vivos gift of them, but they had been neither redeemed or reissued by the co-owner prior to the death of the decedent.

For the reasons set out in the opinion of Judge Sweigert in 312 F. Supp. 1263 (N.D. Cal. 1970), we hold that the bonds are not taxable in the estate of the decedent and affirm the judgment.

APPENDIX C

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD G. CHANDLER and ESTHER F. BORN, as executors of the will of MARY E. BAUM, Deceased,
Plaintiffs-Appellees,

vs.

THE UNITED STATES OF AMERICA,
Defendant-Appellant.

No. 26,085

APPEAL from the United States District Court for the Northern District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A TRUE COPY
ATTEST: Aug. 28, 1972
EMIL E. MELFI, JR., *Acting Clerk*
by S. O. MCKESSON, *Deputy*

Filed and entered May 17, 1972

APPENDIX D

Second Liberty Bond Act, c. 56, 40 Stat. 288:

Sec. 22 [as added by Sec. 6, Act of February 4, 1935, c. 5, 49 Stat. 20 and amended by Sec. 3, Public Debt Act of 1941, c. 7, 55 Stat. 7]. (a) The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 21 of this Act, as amended, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b), (c), and (d) hereof, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

(b) [as amended by Sec. 3, Public Debt Act of 1941, *supra*, and Sec. 1, Act of March 26, 1951, c. 19, 65 Stat. 26] (1) Savings bonds and savings certificates may be issued on an interest-bearing basis, on a discount basis, or on a combination interest-bearing and discount basis and shall mature, in the case of bonds, not more than twenty years, and in the case of certificates, not

more than ten years, from the date as of which issued. Such bonds and certificates may be sold at such price or prices, and redeemed before maturity upon such terms and conditions as the Secretary of the Treasury may prescribe * * *.

* * * * *

[31 U.S.C. § 757c.]

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 2040. JOINT INTERESTS.

The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is

proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

Treasury Regulations on Estate Tax (1954 Code) (26 C.F.R.):

§ 20.2040-1 *Joint interests.*

* * * * *

(b) *Meaning of "property held jointly."* Section 2040 specifically covers property held jointly by the decedent and any other person (or persons), property held by the decedent and spouse as tenants by the entirety, and a deposit of money, or a bond or other instrument, in the name of the decedent and any other person and payable to either or the survivor. * * *

* * * * *

Treasury Regulations on United States Savings Bonds (31 C.F.R., Cum. Supp. 1958):

§ 315.5 *General.* United States Savings Bonds are issued only in registered form. The form of registration used must express the actual owner-

ship of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or a coowner, nor any restriction on the right of the owner or a coowner to receive payment of the bond or interest, other than as provided in these regulations, may be made in the registration or otherwise. * * *

§ 315.7 *Authorized forms of registration.* Subject to any limitations or restrictions contained in these regulations on the right of any person to be named as owner, coowner, or beneficiary, savings bonds may be registered in the following forms:

(a) *Natural persons.* In the names of natural persons in their own right.

(1) *Single owner.* Example:
"John A. Jones."

(2) *Coownership form—two persons* (only). In the alternative as coowners. Example:

"John A. Jones or Mrs. Ella S. Jones."
No other form of registration establishing coownership is authorized.

* * * * *

§ 315.15 *Limitation on transfer or pledge.* Savings bonds are not transferable and are payable only to the owners named thereon, except as spe-

cifically provided in the regulations in this part and then only in the manner and to the extent so provided. A savings bond may not be hypothecated, pledged as collateral, or used as security for the performance of an obligation, except as provided in § 315.16.

* * * * *

§ 315.20 *General.* (a) No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart.

* * * * *

§ 315.60 *During the lives of both coowners.* A savings bond registered in coownership form, for example, "John A. Jones or Mrs. Mary C. Jones," will be paid or reissued during the lives of both, as follows:

(a) *Payment.* The bond will be paid to either upon his separate request, and upon payment to him the other shall cease to have any interest in

the bond. If both request payment jointly, payment will be made by check drawn to their order jointly, for example, "John A. Jones AND Mrs. Mary C. Jones."

(b) *Reissue.* The bond may be reissued upon the request of both if presented and surrendered during the lifetime of both, as follows:

(1) In the name of either, alone or with a new coowner or beneficiary:

(i) If the coowner whose name is to remain on the bond and the coowner whose name is to be eliminated are related to each other as: husband and wife; parent and child (including stepchild); brother and sister (including the half blood, stepbrother and stepsister, and brother and sister through adoption); grandparent and grandchild; great grandparent and great grandchild; uncle or aunt and nephew or niece, including as nephew or niece the children of a brother or sister of the present spouse; granduncle or grandaunt and grandniece or grandnephew; mother-in-law or father-in-law and daughter-in-law or son-in-law; sister-in-law or brother-in-law;

Provided, however, That the Treasury reserves the right to reject any application for reissue hereunder, in whole or in part, upon a determination that the

transaction would tend to evade or defeat the purposes of the limitation on holdings or the restriction against the transferability of savings bonds;

(ii) If one of them marries after the issue of the bond; and

(iii) If they are divorced or legally separated from each other, or their marriage is annulled, after the issue of the bond.

* * * * *

§ 315.61 *After the death of one or both coowners.* If either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. Thereafter, payment or reissue will be made as though the bond were registered in the name of the survivor alone (see Subpart K), except that a request for reissue by him must be supported by proof of death of the other coowner, and except further that after the death of the survivor proof of death of both coowners and of the order in which they died will be required. * * *

§ 315.62 *Upon death of both coowners in a common disaster, etc.* If both coowners die under such conditions that it cannot be established either by presumption of law or otherwise which died first, the bond will be considered as belonging to the estates of both equally, and payment or reissue will be made accordingly. (See Subpart N.)

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1972

No. 72-438

UNITED STATES OF AMERICA, *Petitioner*

vs.

EDWARD G. CHANDLER and ESTHER F. BORN, as Executors of the Will of Mary E. Baum, Deceased.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Ninth Circuit

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Respondents Edward G. Chandler and Esther F. Born, as executors of the will of Mary E. Baum, deceased oppose the petition of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of §22 of the Second Liberty Bond Act, §2040 of the Internal Revenue Code of 1954, and §20.2040-1 of the Treasury Regulations on Estate Tax (1954 Code) are set forth in Appendix D of the petition.

However, the Treasury Regulations on United States Savings Bonds cited in the petition on p. 2 and set forth in Appendix D, pp. 27-31, apparently are taken from 31 C.F.R., Cum. Supp. 1958. Footnote 2 on p. 4 of the petition says references "are to the eighth revision of the Regulations, which were in effect in 1961, when the bonds were transferred by the decedent to her granddaughters".

The government has apparently overlooked its stipulation in this case that:

> "12. A true copy of the Treasury Regulations governing the United States Savings Bonds Series E. is attached hereto as Exhibit 'D'." (Fully Stipulated Facts, p. 3, R. 17)

Exhibit "D" to the stipulation consists of 31 C.F.R., Part 315 (R. 49-66) and 31 C.F.R., Part 316 (R. 66-75), both Parts as amended February 26, 1954. This version of the regulations was in effect when the bonds were issued.

The section numbers and the language of the regulations cited in the petition differ from the stipulated provisions, but the crucial language upon which the government relies is similar in both versions. In this brief we shall refer to the stipulated version of the regulations as set forth in the record.

REASONS FOR DENYING THE WRIT

In this case when the donor irrevocably delivered bonds to coowners named thereon, she relinquished dominion and control. The coowners in possession were entitled under the bond regulations to surrender the bonds

for cash, and the donor no longer had actual power to do so. The federal estate tax law regards substance more than form, and a careful reading of the bond regulations discloses no reason for imposing a federal estate tax in this case.

We doubt that the decisions of the courts below will materially burden the administration of the tax laws or management of the federal savings bond program. However, if the government believes otherwise, it is free to seek an amendment of the federal estate tax law or regulations; at least it could amend the bond regulations to spell out the interpretation for which it now contends.

(1) The basic applicable federal law is that "Section 2040 [of the Internal Revenue Code] is concerned only with beneficial interests possessed by a decedent as a joint tenant." *Estate of Chrysler v. Commissioner*, 361 F.2d 508, 510 (2nd Cir. 1966). The government has not cited any provision of the federal estate tax law or regulations which provides that one registered coowner of United States Savings Bonds is prohibited from giving the other registered coowner beneficial ownership by irrevocably delivering possession.

(2) Nor has the government cited any provision of the bond regulations which expressly so provides. In fact no provision of the bond regulations purports to regulate the rights of coowners to beneficial ownership as between themselves.

The bond regulations leave it to the coowners to determine who shall have the power to cash in the bonds. Reg. §315.45, subparagraph (a) (R. 61) provides:

> "During the lives of both coowners the bond will be paid to either coowner upon his separate request without requiring the signature of the other coowner."

The bond regulations also make it clear that possession is essential for payment. Reg. §315.22 (R. 58) provides in part:

> "In any case payment will be made only following presentation and surrender of the bond for that purpose."

(3) A relinquishment of one coowner's interest in a bond by delivery of possession with intention of making a complete, irrevocable, gift is not a prohibited "transfer" of the bond within the meaning of the bond regulations. The prohibitions against transfer are stated as follows:

> §315.11 (R. 56). "Savings bonds are not transferable and are payable only to the owners named thereon . . ."
>
> §316.8 (R. 69). "Bonds of Series E will not be transferable, and will be payable only to the owner named thereon . . ."

Taken in context, the word "transferable" seems to refer to a transfer of the bond to persons who are *not* "owners named thereon". The regulations say nothing about delivery of possession to a coowner who is named on the bond and who of course is entitled to payment.

(4) The bond regulations do not provide that the form in which a Series E savings bond is registered is

always "conclusive" as to actual ownership. §315.2 (R. 54) provides in part:

> ". . . The form of registration used must express the actual ownership of and interest in the bond and, *except as otherwise specifically provided in these regulations*, will be considered as conclusive of such ownership and interest." (Emphasis added.)

One exception to the "conclusive" effect of registration specifically provided in Reg. §315.13 (R. 56) is the following:

> *"Judicial proceedings (judgment creditors, trustees in bankruptcy, receivers of insolvents' estates and conflicting claimants).*—A claim against an owner or coowner of a savings bond and conflicting claims as to ownership of or interest in such bond as between coowners or the registered owner and a designated beneficiary, will be recognized when established by valid judicial proceedings and payment or reissue will be made upon presentation and surrender of the bond, except as follows:
>
> (a) No such proceedings will be recognized if they would give effect to an attempted voluntary transfer inter vivos of the bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary."

Paragraph (a)'s exception to the exception reaffirms the provisions saying that bonds are not "transferable" but, as stated above, this does not seem to apply to a gift from one coowner to another coowner *named on the bond*. Moreover since they are already both owners of the bond within the meaning of the bond regulations,

such a gift would not seem to constitute a "transfer inter vivos *of the bond*".

Paragraph (a) would also invalidate proceedings which would "defeat or impair the rights of survivorship . . . (of) a surviving coowner". However, in the case at bar, the rights of the surviving coowners are fully recognized and effectuated. With respect to the donor, the stipulated facts are that she voluntarily waived or relinquished her right to survivorship. In doing so she did not "defeat or impair" her rights of survivorship in ordinary meaning of language. The bond regulation obviously is intended to protect the rights of bondholders, not to deprive them of a fundamental right to give property away. Nor is the regulation intended to create a trap for an unwary bondholder—which would be the result of the government's arguments.

(5) *Estate of Curry v. United States,* 409 F.2d 671 (6th Cir. 1969), relied upon by the government as creating a conflict between courts of appeals, was decided without benefit of an adversary proceeding (letter from taxpayer's attorney to the court of appeals' clerk dated May 24, 1968, R. 89). The Sixth Circuit did not consider the points on which Judge Sweigert based his decision which was affirmed by the Ninth Circuit in the case at bar. In *Curry,* the court merely reaffirmed the rule of *Guldager v. United States* 204 F.2d 487 (6th Cir. 1953) that rights or estates in savings bonds are created by federal contract and controlled by federal law —a proposition that has never been disputed in this case. *Guldager* had nothing to do with the estate tax nor with a gift of coownership bonds. The court held that where

state law of tenancies by the entireties squarely conflicted with federal bond regulations, the federal law controlled. (The court held that savings bonds were subject to levy of execution by a judgment creditor of the husband.)

In *Curry* the court also relied on several state court cases invalidating attempted transfers of bonds to persons who were strangers to the bonds and who could not cash them under express provisions of the bond regulations. The court did not mention that the bond regulations permit a coowner named on a bond to cash it in.

When analyzed, *Curry* is weak authority for the two subsequent cases which have followed it and are cited in the petition, p. 6, fn. 3.

(6) In this case the district court (Judge Sweigert) considered the legislative history of the Second Liberty Bond Act and the purposes of the Treasury Department Bond Regulations; it carefully construed the language of the bond regulations, read as a whole and with a view to their purposes. The court also analyzed the case law on the subject, including the conflicting decisions of the Third and Sixth Circuits and related decisions of the United States Supreme Court, and concluded:

> "In short, we find nothing in either the language, or the history or the purpose of the regulations which reasonably calls for exacting an estate tax from the estate of Mary E. Baum under the stipulated circumstances of this record."

We believe that Judge Sweigert's reasoning is sound and will probably be followed by other courts. The supervision of this Court is not needed at this time.

Moreover, if the government now wishes to contend for the first time in this litigation that the 1961 version of the bond regulations governs, it should be barred by its stipulation that the 1954 version governs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondents.

October, 1972.

UNITED STATES *v.* CHANDLER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72–438. Decided January 22, 1973

United States Savings Bonds are includable for federal estate tax purposes in the gross estate of a decedent registered co-owner who, with donative intent, had delivered the bonds to the other co-owners but who had not complied with applicable Treasury Department regulations for making *inter vivos* transfers of such bonds by having them reissued in the names of the other co-owners alone.

Certiorari granted; 460 F. 2d 1281, reversed.

PER CURIAM.

This case presents a narrow federal estate tax issue: Does a registered co-owner of a United States Savings Bond, Series E, by physical *inter vivos* delivery of the bond to the other registered co-owner, with intent to effectuate a gift, but without reissuance of the bond, succeed in divesting himself of the incidents of ownership so that, at his subsequent death, the value of the bond is not includable in his gross estate under the joint interests provisions of § 2040 of the Internal Revenue Code of 1954, 26 U. S. C. § 2040?

The United States District Court for the Northern District of California ruled that the co-owner had accomplished this divestiture, and it rendered judgment in favor of the taxpayer-estate. 312 F. Supp. 1263 (1970). The United States Court of Appeals for the Ninth Circuit affirmed for the reasons set out in the District Court's opinion. 460 F. 2d 1281 (1972). The Sixth Circuit theretofore had held to the contrary on a fact situation similar to that of the present case. *Estate of Curry* v. *United States*, 409 F. 2d 671 (1969). There

are other decisions to like effect. *Estate of Elliott* v. *Commissioner*, 57 T. C. 152 (1971), reviewed by the court and now pending on appeal to the Fifth Circuit; *Chambless* v. *United States*, 70-1 U. S. T. C. ¶ 12,655, 25 A. F. T. R. 2d 70-1512 (SC 1970). The Third Circuit, however, previously had ruled sweepingly along the lines followed by the Ninth Circuit here. *Silverman* v. *McGinnes*, 259 F. 2d 731 (1958).

We grant certiorari and reverse.

I

The decedent, Mary E. Baum, purchased several United States Savings Bonds, Series E, in 1954. She had them issued in the familiar co-ownership form. Some were in the names of Mrs. Baum "or" Patricia Ritter, a granddaughter. Others were in the names of Mrs. Baum "or" Beatrice Baum, another granddaughter. In 1961 the decedent delivered these bonds to the respective granddaughters, with the intention of making complete, irrevocable, *inter vivos* gifts.[1]

Mrs. Baum died in 1962. At her death the bonds were still in the original co-ownership form. They had not been redeemed. Neither had they been reissued, as they might have been under the applicable regulations, in the names of the respective granddaughters as sole owners.

The respondents, who are executors of the decedent's will, disclosed the bonds in the federal estate tax return filed for the decedent's estate but did not include them in the gross estate. On audit, the Internal Revenue Service ruled that the bonds were includable. A result-

[1] It is stipulated that these deliveries were not made in contemplation of death. Section 2035 of the 1954 Code, 26 U. S. C. § 2035, relating to transfers in contemplation of death, therefore has no application.

ing deficiency in estate tax was assessed and was paid by the respondents. The present suit for refund of the tax attributable to the inclusion of the bonds was instituted in due course.

II

Section 2040 is the governing statute. At the time of the decedent's death the section provided that there shall be included in a decedent's gross estate, with exceptions not here pertinent, "the value of all property . . . to the extent of the interest therein held as joint tenants by the decedent and any other person . . . in their joint names and payable to either or the survivor . . . ."

Title 31 U. S. C. § 757c (a) [2] authorizes the Secretary of the Treasury to issue United States Savings Bonds "in such manner and subject to such terms and conditions consistent with subsections (b)–(d) of this section, *and including any restrictions on their transfer*, as the Secretary of the Treasury may from time to time prescribe" (emphasis supplied).

Pursuant to this authorization, the Secretary issued Regulations on United States Savings Bonds. The first were those that appeared in Department Circular 571, dated December 16, 1936, 1 Fed. Reg. 2165. They have been revised from time to time. The eighth revision was in effect in 1961 when Mrs. Baum delivered the bonds in question to her respective granddaughters.

Section 315.5 of the Regulations, 31 CFR (1959 revision), provided that the "form of registration used must express the actual ownership of and interest in the bond and . . . will be considered as conclusive of such ownership and interest." Section 315.7 authorized registration in the names of two persons in the alternative

[2] This is § 22 (a) of the Second Liberty Bond Act, 40 Stat. 288, as added by § 6 of the Act of Feb. 4, 1935, 49 Stat. 21, and as amended by § 3 of the Public Debt Act of 1941, 55 Stat. 7.

as co-owners, and stated, "No other form of registration establishing co-ownership is authorized."

Section 315.15 imposed a limitation on transfer: "Savings Bonds are not transferable . . . except as specifically provided in the regulations . . . ." Section 315.20 (a) stated, "No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond . . . ." Section 315.60 provided that a savings bond registered in co-ownership form will be paid, during the lives of both co-owners, "to either upon his separate request," in which case the other "shall cease to have any interest in the bond," or will be reissued, during the lives of both co-owners, upon the request of both, in the "name of either, alone or with a new co-owner or beneficiary," if, in the case of reissuance, the co-owners possessed one of a number of specifically enumerated relationships, including "grandparent and grandchild."

Section 351.61 related to payment or reissue after the death of a co-owner. The survivor is recognized "as the sole and absolute owner," and payment or reissue is "made as though the bond were registered in the name of the survivor alone," except that the request must be supported by proof of death of the other co-owner.

The regulations thus made the jointly issued bond nontransferable in itself and permitted a change in ownership, so long as both co-owners were alive, only through reissuance at the request of both co-owners.

III

Mary E. Baum, the decedent here, whatever the reason may have been, chose not to have the bonds in question reissued in the names of her granddaughters as she might have done pursuant to the applicable regulations. Instead, she merely delivered the bonds to the granddaughters with donative intent. Our issue is

whether that delivery, accompanied by that donative intent, was sufficient to remove the bonds from the decedent's gross estate. We conclude that it was not.

We have no reason to rule against the integrity and effect of the regulations. The issuance of the bonds by the Secretary, subject to such "restrictions on their transfer" as the Secretary may prescribe, was clearly authorized by the Congress in 31 U. S. C. § 757c (a). And the restrictions on their transfer were just as clearly spelled out by the Secretary in his regulations. No claim is made—and none could be made—that the regulations are unclear or are inapplicable to Mrs. Baum's purported transfers. Nor can we view the regulations as an undue or improper restriction of the transfer rights the decedent would otherwise have. The bonds were issued subject to transfer restrictions, and those restrictions, in the eyes of the law at least, were known to her. She could have had the bonds issued originally in the sole names of the grandchildren, but she chose the co-ownership form and, as her later attempts at transfer reveal, she chose to retain possession of them. Having done so, she was obligated to play the game according to the rules.

The decisions below also overlook the facts that until her death, the decedent retained the right to redeem each of the bonds in question, the right to succeed to the proceeds if she survived the putative donee, and the right to join or to veto any attempt to have the bonds reissued. 31 CFR §§ 315.60 and 315.61 (1959 revision).[3]

We note, in passing, that any other rule could well lead to chaotic conditions with respect to savings bonds

[3] The District Court, and the Court of Appeals in adopting the District Court's opinion, stated that either co-owner could have had the bonds "reissued without even the signature of the other." 312 F. Supp. 1263, 1268. This ignores the positive requirement of § 315.60 that reissue is to be "upon the request of both."

and to great potential for abuse. Millions of these bonds are outstanding.[4] The requirements of Government for uniformity and for proper recordkeeping alone demand and justify something less than absolute freedom of transfer. Considerations of safety and an aspect of permanency of investment are additional factors that demand the same result.

Our conclusion, we feel, is required by the holding in *Free* v. *Bland*, 369 U. S. 663 (1962). There the Court held that, absent fraud, the regulations creating a right of survivorship in United States Savings Bonds issued in co-ownership form overrode or pre-empted any inconsistent state property law. We stressed there, as we do here, that a contrary result would fail "to give effect to a term or condition under which a federal bond is issued." *Id.*, at 669. We see nothing in the earlier case of *Bank of America Trust & Savings Assn.* v. *Parnell*, 352 U. S. 29 (1956), that implies anything to the contrary. That case was also distinguished in *Free* v. *Bland*, 369 U. S., at 669.

Reversed.

[4] The Government in its petition, p. 8, asserts that approximately 500 million Series E Bonds are outstanding, that these are worth over 50 billion dollars, and that 75% of them are registered in co-ownership form.